

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

QUARTERMAINE COFFEE and
MARTHA JAMES
Respondents

Case Nos.: I-00-30114
I-00-30145

FINAL ORDER

I. Introduction

This cases arises under the Civil Infractions Act of 1985 (D.C. Code § 6-2701 *et seq.*) and Title 47, Chapter 28 of the District of Columbia Code. By Notice of Infraction (00-30112) served on December 6, 2000, the Government charged Respondents Quartermaine Coffee and Martha James with a violation of D.C. Code § 47-2827(e) for allegedly operating without a restaurant license. The Notice of Infraction alleges that Respondents violated § 47-2827(e) at 1001 Pennsylvania Avenue, N.W. on September 15, 2000, and seeks a fine of \$500.00 for the alleged violation. *See* 16 DCMR 3214.1(z).

On January 9, 2001, this administrative court issued an order finding Respondents in default for failing to answer timely the Notice of Infraction (00-30112). As a result of Respondents' default, the January 9 order imposed a statutory penalty of \$500.00 pursuant to

D.C. Code § 6-2712(f). In addition, the January 9 order directed the Government to serve a second Notice of Infraction pursuant to D.C. Code § 6-3712(f). The Government served the second Notice of Infraction (00-30145) on January 17, 2001.

Because Respondents failed to answer timely the second Notice of Infraction, this administrative court issued a Final Notice of Default on March 19, 2001. The March 19 order imposed an additional statutory penalty of \$500.00 pursuant to D.C. Code § 6-2712(f). In addition, pursuant to D.C. Code § 6-2713, the March 19 order scheduled an *ex parte* proof hearing for April 18, 2001 at which Respondents could elect to appear to contest liabilities, fines, penalties, or fees in accordance with applicable law. Enclosed with the Final Notice of Default were copies of the first and the second Notices of Infraction.

Prior to the April 18, 2001 hearing, and in accordance with the requirements of the March 19 order, the Government submitted five exhibits in support of the Notices of Infraction. With certain exceptions, these exhibits were offered and received into evidence at the hearing. *See* Petitioner's Exhibits 100-104 ("PX-100 - PX-104").¹ The inspector who issued the Notices of Infraction also appeared for hearing and testified under oath. Respondents did not appear at the hearing, nor did they submit any evidence.

¹ PX-100 and PX-101 were copies of the first and second Notices of Infraction, respectively. Because the record contains the originals of these charging documents, PX-100 and PX-101 were not offered into evidence. PX-102, which was admitted into evidence at the hearing, is identified as a Food Establishment Inspection Report of Respondents' establishment dated June 16, 2000. PX-103, which was admitted into evidence at the hearing, is identified as a Food Establishment Inspection Report of Respondents' establishment dated September 1, 2000. PX-104, which was admitted into evidence at the hearing, is identified as a D.C. Department of Consumer and Regulatory Affairs printout of Respondents' establishment's license status as of April 5, 2001.

II. Findings of Fact

Based upon direct observation of the testimony of the inspector, which this administrative court finds to be credible, the exhibits submitted by the Government and the entire record in this case, this administrative court makes the following findings:

1. 1001 Pennsylvania Avenue, N.W. is Respondents' last known business address. *See* PX-102; PX-103; PX-104.
2. The Government served the Notices of Infraction in this matter upon Respondents on December 6, 2000 and January 17, 2001 by mail, as evidenced by the certificates of service signed by the Government's representative. The address used was 1001 Pennsylvania Avenue, N.W.
3. This administrative court served the January 9, 2001 default order and the March 19, 2001 Final Notice of Default, which set the date for the *ex parte* hearing, by U.S. Mail/Delivery Confirmation upon Respondents at the 1001 Pennsylvania Avenue, N.W. address.
4. Respondents have offered no explanation in these proceedings for their failure to answer the Notices of Infraction.
5. At all relevant times in this matter, Respondent Martha James was the manager of Respondent Quartermaine Coffee located at 1001 Pennsylvania Avenue, N.W. PX-103.

6. At all relevant times in this matter, Northfield Café Corp. was the corporate name of Respondent Quartermaine Coffee, and both of these entities are identified by customer number 39805302 and trading as “Barista.” PX-102; PX-103; PX-104.
7. On June 16, 2000, Respondents were issued a Food Establishment Inspection Report which noted, *inter alia*, that Respondent Quartermaine Coffee’s license to operate a delicatessen did not permit Respondents to set up seats on the premises. PX-102; PX-104.
8. On September 1, 2001, Respondents were issued a Food Establishment Inspection Report which noted, *inter alia*, that Respondent Quartermaine Coffee had seats on its premises. PX-103; PX-104.
9. On September 15, 2000 Respondent Quartermaine Coffee had seats on its premises for public use.
10. On September 15, 2000, Respondent Quartermaine Coffee did not have a license to operate a restaurant, and Respondent Quartermaine Coffee’s license to operate a delicatessen (No. 29814235) had expired as of August 31, 1998. PX-104.

III. Conclusions of Law

1. Respondents had sufficient notice of the charge against them as mandated both by the Due Process Clause and the Civil Infractions Act of 1985. Service of the Notices of Infraction by mail to Respondents’ last known business address, *i.e.*, 1001 Pennsylvania Avenue, N.W., is sufficient notice. *See Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia*

Dep't of Employment Servs., 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985); D.C. Code § 6-2715.

2. Within the meaning of D.C. Code § 47-2827(e), a restaurant is defined as any place where food or refreshments are served to transient customers to be eaten on the premises where sold. D.C. Code § 47-2827(e)(2). *See also* 23 DCMR 2499. In contrast, a delicatessen is defined as any place where food, drink, or refreshments are cooked, prepared, and sold for consumption other than on the premises. *See* 23 DCMR 2400.2; 23 DCMR 2499. As a result, a license to operate a delicatessen in the District of Columbia does not permit food or refreshments served to transient customers to be consumed on the premises where sold.
3. By having public seating in their establishment on September 15, 2000, Respondents created an environment in which food or refreshments served to transient customers would be consumed on Respondents' premises as if Respondents possessed a license to operate a restaurant. *See* D.C. Code § 47-2827(e)(2); 23 DCMR 2499. Because Respondents did not have a license to operate a restaurant on September 15, 2000, they violated D.C. Code § 47-2827(e). Accordingly, Respondents are liable for a fine in the amount of \$500.00. *See* 16 DCMR 3214.1(z).
4. Respondents failed to answer both the first and second Notices of Infraction without demonstrating good cause for those failures, and therefore are liable for

statutory penalties of \$1,000.00 in addition to the civil fine prescribed for the violation. *See* D.C. Code §§ 6-2704(a)(2)(A) and 6-2704(a)(2)(B).

Therefore, upon the entire record in this case, it is hereby this _____ day _____, 2001.

ORDERED, that Respondents, who are jointly and severally liable for the infraction as charged in Notices of Infraction 00-30114 and 00-30143, shall cause to be remitted a single payment totaling **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) calendar days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's license or permits pursuant to D.C. Code § 6-2713(f).

/s/ **5-11-01**

Mark D. Poindexter
Administrative Judge